

EIGHTH DIVISION

[CA-G.R. SP No. 123749, May 26, 2014]

**SPS. ARISTOTLE MENDOZA AND MARIE LIZA MENDOZA,
PETITIONERS, VS. SPS. ROLANDO REX S. REYES AND LEONORA
R. REYES AND HON. LORENZA R. BORDIOS, PRESIDING JUDGE,
REGIONAL TRIAL COURT OF CALOOCAN CITY, BRANCH 126,
RESPONDENTS.**

D E C I S I O N

INTING, S.B., J.:

This Petition for *Certiorari*^[1] seeks to nullify the Orders dated: 1) 10 June 2011^[2] granting respondents' petition for relief from judgment; and 2) 12 December 2011^[3] denying petitioner's motion for reconsideration of the 10 June 2011 Order issued by the Regional Trial Court (RTC), Branch 126, Caloocan City in Civil Case No. C-22078 entitled "*Sps. Aristotle M. Mendoza and Marie Liza S. Mendoza, Plaintiffs, - versus- Sps. Rolando Rex S. Reyes and Leonora R. Reyes, Defendants.*"

THE FACTS

This case stemmed from an action for Consolidation of Ownership filed by spouses Aristotle M. Mendoza and Marie Liza S. Mendoza [petitioners] against spouses Rolando Rex S. Reyes and Leonora S. Reyes [private respondents].

Petitioners and private respondents allegedly executed two (2) Deeds of Sale under Pacto De Retro whereby private respondents sold with right of repurchase two (2) real properties covered by TCT No. C-323700 and TCT No. C-323701 respectively to petitioners in the amount of One Million Seven Hundred Thousand Pesos (P1,700,000.00) or P850,000.00 each.

When the agreed periods to repurchase the properties had lapsed, petitioners filed the case for Consolidation of Ownership.

In the said complaint, petitioners indicated that private respondents may be sent their summons at No. 15 Katuparan St., Gao, Quezon City. However, personal service of private respondents' summons issued by the court on 10 June 2008 failed as per certification^[4] of Sheriff Nicolas C. Ramos dated 26 June 2008 indicating that the given address was demolished by the City Government of Quezon City on May 2008. Thus, the summons was unserved.

On 17 July 2008 petitioners then filed an Ex-Parte Motion to Direct the Process Server to Serve Summons Anew Atty. Ruben Talampas, Jr. [private respondents' lawyer as indicated in the latter's letter to petitioners]. However, it was denied for lack of merit.

Later, petitioners filed a Motion for Leave to Serve Summons by Publication which was granted by the court on 29 October 2008. The publication indicated the same

address stated above as the last known address of private respondents. After publication, trial ensued and the case was submitted for resolution.

On 26 June 2009, the Regional Trial Court (RTC), Branch 126, issued a decision^[5], the dispositive portion of which states:

"Foregoing considered, the petition is hereby GRANTED. Let the consolidation of ownership of the subject properties in plaintiffs' name be recorded in the Register of Deeds of Caloocan City. The latter is likewise ordered to issue Transfer Certificates of Title in favor of plaintiffs SPOUSES ARISTOTLE M. MENDOZA and MARIE LIZA S. MENDOZA cancelling TCT Nos. C-323700 and C-323701 in the name of the defendants.

SO ORDERED.^[6]

Petitioners then filed an Ex-parte Motion to Serve Decision by Publication which was granted by the court *a quo*.

Later, private respondents filed a Petition for Relief from the judgment rendered by the court *a quo* 26 June 2009 in Civil Case No. C-22078 on the ground of fraud committed by petitioners in securing the same.

On 10 June 2011 the Regional Trial Court (RTC), Branch 126, Caloocan City, issued its Order^[7], the pertinent portion of which reads:

"Verily, defendants/petitioners Reyes were deprived of their right to present their evidence, thus, the assailed decision is set aside. With this ruling, all other pending incidents become moot and academic. Let Summons be served to defendants Spouses Rolando Rex S. Reyes and Leonora R. Reyes ar Lot 30, Block 1, Phase 3, Saint Matthew St., Sacred Heart Village, Caloocan City.

SO ORDERED."^[8]

Petitioners moved for the reconsideration of said order.

On 1 February 2011 the court *a quo* issued an Order^[9] which provides:

"There being no cogent reason to set aside the assailed Order, the Motion for Reconsideration is denied.

SO ORDERED.^[10]

Hence, this petition.

THE PETITION

Petitioners anchored their petition on these grounds:

"I. THE PUBLIC RESPONDENT GRAVELY ABUSED ITS DISCRETION IN FINDING THE PETITIONERS AS GUILTY OF FRAUD DESPITE LACK OF EVIDENCE TO SUPPORT SUCH FINDING

II. THE PUBLIC RESPONDENT GRAVELY ERRED AND ABUSED ITS DISCRETION IN IGNORING UNCONTROVERTED FACTS WARRANTING A CONCLUSION THAT PETITIONERS ACTED IN GOOD FAITH AND IN FULL TRANSPARENCY”^[11]

Petitioners ascribed abuse of discretion to the court *a quo*. Petitioners maintained that they should not be faulted in relying on the address provided by private respondents in their Deed of Sale with Pacto de Retro as they have no obligation to inform the court of their correct address and to determine private respondents' correct address. They contended that private respondents were negligent and acted deliberately in not participating in the case filed against them.

Petitioners claimed that their effort of good faith and full transparency was shown when they filed a motion before the court that summons be served through Atty. Ruben Talampas, Jr., private respondents' former counsel. However, this was denied by the court *a quo*.

THIS COURT’S RULING

Here, the crux of the controversy is whether the court *a quo* committed grave abuse of discretion amounting to lack or excess of jurisdiction in granting respondents' petition for relief from judgment and in denying reconsideration of the grant of the same.

The petition is bereft of any merit.

A Petition for *Certiorari* under Rule 65 is the proper remedy in assailing that a judge has committed grave abuse of discretion amounting to lack or excess of jurisdiction. Section 1, Rule 65 of the Rules of Court clearly sets forth when a petition for certiorari can be used as a proper remedy:

“SECTION 1. Petition for certiorari. – When any tribunal, board or officer exercising judicial or quasi-judicial functions has acted without or in excess of its jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, and there is no appeal, or any plain, speedy, and adequate remedy in the ordinary course of law, a person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered annulling or modifying the proceedings of such tribunal, board or officer, and granting such incidental reliefs as law and justice may require.”

The term "grave abuse of discretion" has a specific meaning. An act of a court or tribunal can only be considered as with grave abuse of discretion when such act is done in a "capricious or whimsical exercise of judgment as is equivalent to lack of jurisdiction.”^[12] The abuse of discretion must be so patent and gross as to amount to an "evasion of a positive duty or to a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law, as where the power is exercised in an arbitrary and despotic manner by reason of passion and hostility.”^[13] Furthermore, the use of a petition for certiorari is restricted only to "truly extraordinary cases wherein the act of the lower court or quasi-judicial body is wholly void.”^[14] From the foregoing definition, it is clear that the special civil action of certiorari under Rule 65 can only strike an act down for having been done with grave abuse of discretion if the petitioner could manifestly show that such act was patent and gross.^[15]